

ESTATE OF PETER FEATHER EARRING CLEVELAND

IBIA 77-8

Decided March 30, 1977

Petition to reopen.

Granted and remanded

1. Indian Probate: Reopening: Generally

While requests for reopening estates closed for more than 3 years face rigid requirements under Departmental regulations, exceptional cases arise in which such petitions should be granted.

2. Indian Probate: Reopening: Generally

Generally, three elements must be satisfied to justify reopening an estate which has been closed a long time. First, it must appear that a manifest injustice will likely prevail if the petition to reopen is denied. Second, it should be demonstrated by compelling proof that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioning parties. Third, there should exist a possibility for correction of the error.

APPEARANCES: Montana Legal Services Association, by John R. Hunt, Esq., for Edith Graybull.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Decedent, allotted Fort Peck Indian and adopted son of Grover and Rose Chaser Cleveland, died intestate on October 2, 1954,

predeceased by his natural and adoptive mothers from whom he inherited interests in allotted lands in Montana and South Dakota.

An Order Determining Heirs was issued by J. M. Mandell, Examiner of Inheritance, on December 16, 1955, wherein he determined the heirs under the laws of Montana to be:

Grover Cleveland--Adoptive Father--1/2
Edith Feather Earring Graybull--Natural Sister--1/2

In or about 1961 it was discovered for the first time that the Examiner of Inheritance was in error and that under the then existing intestacy laws of Montana in 1954-55, the adoptive father, Grover Cleveland was the sole heir.

A modification of Property Inventory was issued by Administrative Law Judge William E. Hammett, December 21, 1972, regarding omitted land interests located in the State of South Dakota, which the decedent inherited from his adoptive mother, Rose Chaser Cleveland, Fort Peck allottee. The purpose of the modification was to include the additional South Dakota property in the inventory of real property and to distribute same in accordance with the existing intestacy laws of the State of South Dakota (Section 56.0104 South Dakota Code of 1939) at the time of decedent's demise, which was, solely to the Estate of Grover Cleveland, Grover Cleveland having died in 1969.

A petition for reconsideration submitted by Edith Feather Earring Graybull was denied on October 29, 1973.

The Superintendent of the Fort Peck Agency subsequently petitioned for reopening on behalf of the heirs of Grover Cleveland, the adoptive father, who obviously should have been declared the sole heir of decedent's estate under the then existing intestacy laws of Montana as well as South Dakota.

A report on intervening rights submitted by the Area Office discloses there are interests in several allotments still intact and still in trust.

In a memorandum to this Board dated November 8, 1976, Administrative Law Judge David J. McKee recommended that the matter be reopened to correct certain past errors.

The record discloses that Grover Cleveland was approximately 82 years of age and in poor health when Peter Cleveland died.

We are aware of the elements that generally must be satisfied, namely, it must appear that a manifest injustice will likely prevail if the petition to reopen is denied. Second, it should be demonstrated by compelling proof that the delay in requesting relief was

not occasioned by the lack of diligence on the part of the petitioning parties. Third, there should exist a possibility for correction of the error.

In this case a manifest injustice obviously would prevail if the petition to reopen is denied and there exists the possibility for correction of the error regarding the interests in several allotments still intact and in trust.

The record indicates the error was committed by the Departmental representative, i.e., the Examiner of Inheritance, in misconstruing the then existing intestacy laws of Montana and South Dakota. Grover Cleveland was an octogenarian in poor health. We feel that a petition of this nature must be evaluated in light of its peculiar circumstances. We find that Grover Cleveland certainly did not occasion the error on the delay and that the above three elements were satisfied.

Nonetheless, in this instance the Board would not hesitate to exercise the Secretary of the Interior's inherent authority and reopen this matter on its own motion.

We conclude that this matter should be reopened and find that the Order Determining Heirs dated December 16, 1955, should be modified and changed to show Grover Cleveland to be the sole heir.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Petition to Reopen the Estate of Peter Feather Earring Cleveland, is hereby GRANTED and the matter REMANDED for correction and modification of the Order Determining Heirs dated December 16, 1955, by the Administrative Law Judge in keeping with the findings made, supra, by this Board short of reaffirmation of the oil and gas leases referred to in Judge McKee's memorandum of November 8, 1976 which the Board believes to be a matter within the jurisdiction and discretion of the Bureau of Indian Affairs. This decision is final for the Department.

Mitchell J. Sabagh
Administrative Judge

I concur:

Wm. Philip Horton
Administrative Judge